IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 100 of 1982

L.Rs. of NAND LAL & ANR.
V/S
SURYA NARAIN & ORS,

Mr. MANISH SHISHODIA, for the appellant / petitioner

Mr. RK PUROHIT for Mr. RAJENDRA MEHTA, for the respondent

Date of Order : 17.7.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

This second appeal has been filed by the defendants against the decree for eviction passed by the learned lower Appellate Court on the ground of reasonable and bonafide necessity of the plaintiff. I need not detain myself in narrating long chequered history of the case as to how many rounds the litigation had in this Court. It would suffice to say, that the learned District Judge vide impugned judgment dt. 24.5.1982 had decreed the suit on the ground of reasonable and bonafide personal necessity of the plaintiff. The appeal was filed on 19.7.1982, and was admitted on 21.7.1982, by framing the following substantial question of law:-

> "Whether the first appellate Court was right in deciding the issue regarding partial eviction without considering the fact that the triangular portion

towards the east was admittedly of no use to the plaintiff?”

It may be noticed that during pendency of the appeal the tenant Nandlal died on 18.7.1989, and an application, for substitution of his legal representatives, and for setting aside abatement was filed on 3.1.2000. However, since no reply to the application was filed, vide order dt. 17.8.2000 the application was allowed, and the legal representatives of the appellant no.1 were ordered to be substituted. Thereafter the appellant filed another application purportedly under Section 100 read with Section 151 C.P.C. alleging interalia, that the appellant has started his own business in the name of Asha Book House, and that during pendency of the litigation adjoining shop rented out to one Saudagar Mal was vacated, and the shop has been let out by the plaintiff to one Kishan Jhanwar, which shows that the personal necessity alleged was only a bare wish or desire. That shop is said to have been vacated consequent upon dismissal of the appeal filed by Saudagar Mal, being S.B. Civil Misc. Appeal No. 99/1982. With this, it was prayed that the two additional substantial questions of law mentioned in para-2 of the application be framed. Likewise, it has also been contended that since the suit was dismissed, the appellant was not required to challenge the finding on other issues, and therefore, two more substantial questions of law are desired to be framed as

detailed in para-3 of the application, being, as to whether the plaintiff trust is the owner of the suit property so as to maintain the suit for eviction against the appellants, and whether on account of omission to file an appeal against finding on issue of personal necessity recorded in favour of the plaintiff on 6.7.1977, the appellant is required to be evicted from the suit premises despite the suit having been dismissed by the appellate court.

A reply to this application has been filed contending inter alia, that the plaintiff Ashram has only two properties; first property is the land comprised of shifting sand dunes in village Udairamsar, and the second property is the suit property, a portion of which is under the occupation of Mahesh Kumar, one of the newly added legal representatives of appellant Nandlal, and all the portion of the property other than that occupied by Mahesh Kumar is in exclusive possession of the trust, and that the trust has not let out or parted with the possession of any portion thereof to any Kishan Jhanwar or any-body-else. Then, it was also contended that Nandlal seldom came to his partnership hotel run by his partner Saudagarmal as Nandlal was running his separate hotel under name and style of Metro Hotel. Then, it was contended, that Mahesh Kumar or any other member of late Nandlal's family were never seen in the suit premises, rather it was after a couple of years of death of Nandlal, Saudagarmal suffered paralysis, and

left Bikaner selling all his residential and agricultural properties, and the suit premises remained shut, and deserted, for many years, and it is thereafter that Mahesh Kumar broke open a large portion of the deserted suit premises in January, 2000, and started his fresh business of novels and magazines under the banner of Asha Book House. Recently another activity under the banner of Ganpati Dairy House has also been added in the suit premises. Then some facts regarding continuous need were given out. An affidavit of Shrikishan, and Gopal Jhanwar have also been filed in support of this stand.

From the above, it does give some indication, that after death of Nandlal, his son Mahesh Kumar has recently occupied premises, and has started a different business anew. That may furnish sufficient ground to enable me to hold, that he does not continue to enjoy protection of Rajasthan Premises (Control of Rent & Eviction) Act, 1950, after the death of Nandlal, who died in 1989. However, the fact also does remain, that the application, that was filed for substitution of legal representatives, does make categoric averment about the legal representatives being carrying on business along with deceased, at the time of his death, as member of his family, and the averment made in that application had not been controverted, that application had been allowed vide order dt. 17.8.2000, in that view of the matter, I do not stand advised to go into

this controversy on merits, as to whether the heirs of the defendant appellant Nandlal continue to enjoy the protection of the Act or not, as, after going through the entire record on merits also, I am not finding any sustainable case of the appellants.

I may now first of all take up the application dated 25.10.2005, seeking to have framed additional substantial questions of law. Significantly a look at the memo of appeal shows, that regarding the other substantial questions of law which are now sought to be got framed, as mentioned in para-3 of the application, the submissions had already been made in para-11 of the appeal, and substantial questions no. 1, 2 and 3 etc. were already framed in the memo of appeal, but then, it appears that the only one substantial question of law was pressed, and that was framed. In that view of the matter, I am not inclined to frame the other substantial questions of law as mentioned in para-3 of the application. So far as the questions raised in para-2 of the application are concerned, as noticed above, the factual averment has been disputed, rather the affidavit of alleged person, to whom premises are alleged to have been re-let, has already filed affidavit, and prima facie I do not find any material, which may lend assurance to the bald averment made in para-2 of the application, therefore, the application for framing additional substantial questions of law is

dismissed.

Coming to the substantial question as framed in the order dt. 21.7.1982, the whole thrust of the submission of the learned counsel for the appellant is, on the basis of the statement of Dr. Durga Dutt, dt. 3.5.1982, wherein he has deposed, that the triangular land is about 25 x 25 x 20 ft., and the small triangle cannot be used. Since the controversy was confined to the triangle deposed by said Durga Dutt, being not capable of being used, as the property itself is also deposed to be triangular, I tried to understand things from the site plan, which has been marked as Ex.-Y, produced along with the plaint, and the triangle, deposed by said Durga Dutt, being not capable of being used, was pointed out by the learned counsel for the appellant, which for the sake of understanding, has been marked by me today, by the figures “1, 2, and 3”. Towards the West of this triangle is one room, and one garage described as garage having two doors.

It is contended by the learned counsel for the appellant that since Dr. Durga Dutt had deposed the triangular to be of no use, the appellant should be allowed to retain at least that portion of the premises instead of being evicted whole hog.

I have considered the submission.

For deciding the question of partial eviction, the provision of law is one contained in Section 14(2) of the act, which provides that no decree for eviction on the ground set forth in clause(h) of sub-section (1) of section 13 shall be passed, if the court is satisfied, that no hardship would be caused, either to the tenant or to the landlord, by passing the decree in respect of a part of the premises, in which event the court shall pass the decree in respect of such part only.

The case is therefore required to be examined on the anvil of the above provision. A look at the record shows that the plaintiff has produced the site plan of the property, which is marked as Ex. Y, and a look at the statement of the deceased appellant Nandlal, who was examined as D.W.1 on 23.4.1969 shows, that in the last line of his cross examination he has admitted, that the property marked with red colour in Ex. Y is in his tenancy. In this background a look at Ex. Y shows, that the property in his tenancy is marked by red colour therein. In this sequence, as observed above, the eastern triangle, deposed by Dr. Durga Dutt has been identified by the learned counsel in this map, which is marked by me today by figures 1, 2 and 3, and I may immediately notice, that this triangle is not marked by red colour, like various other apartments in Ex. Y, therefore, the only conclusion is, that this triangle

portion is not in the tenancy of the appellant.

Admittedly Durga Dutt had not stated about any of the apartments in the tenancy of the appellant to be not required for the purpose of the plaintiff. At the same time, a look at the provisions of Section 14(2) shows, that obviously it comprehends passing of decree for part of the premises, of necessity, out of the rented premises, and does not contemplate a situation, either to entitle the tenant to claim, or to enable the Court to compel the land lord, that the tenant be accommodated in other premises, which may be available with the landlord, and which, as alleged in the present case, is of no use to the plaintiff.

Thus, in my view, after the triangular portion is identified by the learned counsel, the question of partial eviction no more survives.

This being the only question framed, and prayer for framing other questions having already been declined, the appeal obviously has no force, and is required to be dismissed, and is accordingly dismissed. The parties are left to bear their own costs.

(N P GUPTA),J.

/Sushil/